

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Hoosier Public Radio Corporation)	File No.: EB-10-CG-0743
)	NAL/Acct. No.: 201232320002
Licensee of Station WRFM-FM)	FRN: 0006402911
Wilkinson, Indiana)	Facility ID No.: 173964
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 7, 2012

Released: March 8, 2012

By the District Director, Chicago Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Hoosier Public Radio Corporation (Hoosier), licensee of Non-Commercial Educational Station WRFM-FM, in Wilkinson, Indiana (Station), apparently willfully and repeatedly violated Section 73.1350(a) of the Commission's rules (Rules),¹ by failing to maintain and operate its broadcast station in accordance with the terms of the Station's authorization. We conclude that Hoosier is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000). We also direct Hoosier to submit a report, signed under penalty of perjury, regarding the status of the Station's operations.

II. BACKGROUND

2. The license for Station WRFM-FM authorizes Hoosier to operate a Non-Commercial Educational FM Station on 89.1 MHz in Wilkinson, Indiana. More specifically, the license provides that the Station's transmitter shall be located at the geographical coordinates of 39° 52' 46" north latitude and 85° 38' 11" west longitude, which is in rural Brown Township, Hancock County, Indiana.

3. On September 28, 2010, in response to a complaint, an agent from the Enforcement Bureau's Chicago Office (Chicago Office) commenced an investigation into the Station's operations. The agent traveled to the transmitter site authorized in the Station's license and found no transmission facilities of any kind. On September 30, 2010, the agent conducted an inspection with Martin Hensley, Hoosier's president and chief operator, at the Station's main studio and at the Station's authorized transmitter site. The agent found that the Station was operating from an antenna mounted on a farm silo at the approximate geographic coordinates of 39° 50' 15" north latitude and 85° 37' 30" west longitude in rural Jackson Township, Hancock County, Indiana (hereinafter referred to as the "Farm Silo" location), which is approximately three miles from the Station's authorized transmitter location. During the inspection, Mr. Hensley was not able to provide the agent a copy of a license authorizing the Station to operate from the Farm Silo. Mr. Hensley did provide the agent a copy of a letter, dated January 5, 2009, in which Hoosier advised the Commission that it had moved from its licensed facilities and requested authorization to locate its facilities temporarily at a nearby site.² Hoosier could not provide proof that the letter was properly filed

¹ 47 C.F.R. § 73.1350(a).

² Letter from Martin Hensley to FCC Secretary (Jan. 5, 2009) (on file in EB-10-CG-0743). The letter did not
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with the Commission. The Commission also has no record of receiving the January 5, 2009, letter and, according to the Commission's records, Hoosier has never been granted a Special Temporary Authorization (STA) to operate from the Farm Silo.

4. On February 10, 2011, in response to a complaint from the Federal Aviation Administration (FAA) concerning harmful interference in Wilkinson, Indiana, an agent from the Chicago Office determined that the interfering signal was coming from the Station, which was still operating from the Farm Silo without an STA.³ On the following day, an agent from the Chicago Office contacted Mr. Hensley regarding the Station's continued unauthorized operation and advised Mr. Hensley that an STA was required to operate from the Farm Silo. Another agent from the Chicago Office conducted a follow-up investigation and found that the Station was still operating from the Farm Silo on February 14, 2011.

5. On February 16, 2011, Hoosier filed an STA request for authorization to operate from a nearby church. The FCC's Media Bureau granted the STA on February 17, 2011.⁴ On August 2, 2011, an agent monitored the frequency 89.1 MHz in Wilkinson, Indiana, and found that the Station was not broadcasting.⁵

III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

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identify the location of the new "nearby site."

³ Hoosier replaced the transmitter and the interference to the FAA ceased.

⁴ On November 4, 2011, the Commission granted Hoosier's request for extension of the STA, which is now set to expire on May 4, 2012. *See* BESTA-20110817AAB.

⁵ Hoosier is being asked to report on the current status of its operations. *See infra* paragraph 9.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

⁹ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359,

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A. Operating Station at an Unauthorized Location

7. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in accordance with the terms of the station authorization. On September 30, 2010, and on February 10 and 14, 2011, agents from the Chicago Office determined that Hoosier operated the Station from an unauthorized location without an STA. Because Hoosier consciously operated the station, we find that the violation was willful. Furthermore, because the unauthorized operation occurred on more than one day, we find that the violation was also repeated. Based on the evidence before us, we conclude that Hoosier apparently willfully and repeatedly violated Section 73.1350(a) of the Rules by failing to maintain and operate its broadcast station in accordance with the terms of its station authorization.

B. Proposed Forfeiture and Reporting Requirement

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for construction or operation at an unauthorized location is \$4,000.¹² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹³ We find that Hoosier's continued operation from an unauthorized location even after the FCC agent's inspection on September 30, 2010, which resulted in harmful interference to the FAA, constitutes egregious behavior warranting an upward adjustment of \$4,000. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Hoosier is apparently liable for a total forfeiture in the amount of \$8,000.

9. We also direct Hoosier to submit a written statement signed under penalty of perjury, pursuant to Section 1.16 of the Rules,¹⁴ by an officer or director of Hoosier, reporting on the status of the Station's operations (i.e., whether it is currently broadcasting; if not, an explanation as to why, and when, it has stopped broadcasting) and the location of its transmitter. This statement must be provided to the Chicago Office at the address listed in paragraph 14, below, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204(b), 0.311, 0.314, and 1.80 of the Commission's Rules,

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1362, para. 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 C.F.R. § 1.16.

Hoosier Public Radio Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Section 73.1350(a) of the Rules.¹⁵

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Hoosier Public Radio Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that Hoosier Public Radio Corporation **SHALL SUBMIT** a sworn statement, as described in paragraph 10, to the Enforcement Bureau Office listed in paragraph 14 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

13. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Hoosier Public Radio Corporation will send electronic notification on the date said payment is made to NER-response@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Chicago District Office, 1550 Northwest Highway, Suite 306, Park Ridge, IL 60068 and include the NAL/Acct. No. referenced in the caption. Hoosier Public Radio Corporation also shall email the written response to NER-Response@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁵ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 73.1350(a).

⁸ See 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested and regular mail to Hoosier Public Radio Corporation at 15 Wood Street, Greenfield, Indiana 46140.

FEDERAL COMMUNICATIONS COMMISSION

James M. Roop
District Director
Chicago Office
Northeast Region
Enforcement Bureau